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SERIAL NUMBER	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
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07/965,069 10/22/92 MICHELSON

G P-1093611

HANLON, B EXAMINER

F3M1/1018

ART UNIT PAPER NUMBER

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3301

DATE MAILED: 10/18/93

This is a communication from the examiner in charge of your application.
COMMISSIONER OF PATENTS AND TRADEMARKS

☒ This application has been examined ☒ Responsive to communication filed on 7-12-93 ☒ This action is made final.

A shortened statutory period for response to this action is set to expire 3 month(s), _____ days from the date of this letter.
Failure to respond within the period for response will cause the application to become abandoned. 35 U.S.C. 133

Part I THE FOLLOWING ATTACHMENT(S) ARE PART OF THIS ACTION:

- | | |
|---|---|
| 1. <input type="checkbox"/> Notice of References Cited by Examiner, PTO-892. | 2. <input type="checkbox"/> Notice of Draftsman's Patent Drawing Review, PTO-948. |
| 3. <input type="checkbox"/> Notice of Art Cited by Applicant, PTO-1449. | 4. <input type="checkbox"/> Notice of Informal Patent Application, PTO-152. |
| 5. <input type="checkbox"/> Information on How to Effect Drawing Changes, PTO-1474. | 6. <input type="checkbox"/> _____ |

Part II SUMMARY OF ACTION

1. ☒ Claims 9, 11, 12, 14, 15 are pending in the application.

Of the above, claims _____ are withdrawn from consideration.

2. ☐ Claims _____ have been cancelled.
3. ☐ Claims _____ are allowed.
4. ☒ Claims 9, 11, 12, 14, 15 are rejected.
5. ☐ Claims _____ are objected to.
6. ☐ Claims _____ are subject to restriction or election requirement.
7. ☐ This application has been filed with informal drawings under 37 C.F.R. 1.85 which are acceptable for examination purposes.
8. ☐ Formal drawings are required in response to this Office action.
9. ☐ The corrected or substitute drawings have been received on _____. Under 37 C.F.R. 1.84 these drawings are ☐ acceptable; ☐ not acceptable (see explanation or Notice of Draftsman's Patent Drawing Review, PTO-948).
10. ☐ The proposed additional or substitute sheet(s) of drawings, filed on _____, has (have) been ☐ approved by the examiner; ☐ disapproved by the examiner (see explanation).
11. ☐ The proposed drawing correction, filed _____, has been ☐ approved; ☐ disapproved (see explanation).
12. ☐ Acknowledgement is made of the claim for priority under 35 U.S.C. 119. The certified copy has ☐ been received ☐ not been received ☐ been filed in parent application, serial no. _____; filed on _____.
13. ☐ Since this application appears to be in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under Ex parte Quayle, 1935 C.D. 11; 453 O.G. 213.
14. ☐ Other

EXAMINER'S ACTION

Art Unit: 3301

The following is a quotation of the first paragraph of 35 U.S.C. § 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

The specification is objected to under 35 U.S.C. § 112, first paragraph, as the specification, as originally filed, does not provide support for the invention as is now claimed.

The specification does not supply support for the limitation that the projections are disposed along substantially the entire length of the shaft. Neither the drawings or the specification provide support for this limitation.

Claims 14 and 15 are rejected under 35 U.S.C. § 112, first paragraph, for the reasons set forth in the objection to the specification.

Claims 9,11,12,14 and 15 are rejected under 35 U.S.C. § 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

The rejections of claims 9,11 and 12 set forth in the first Office Action, paper #3, are maintained by the examiner for applicant has not addressed or obviated said rejections. The following rejections also apply:

Art Unit: 3301

Claims 14 and 15 are rejected for applicant's claiming that the projections are closely spaced is vague. It is not understood what type of distance applicant is claiming by the use of such a phrase. "Close" is a relative term and without some gauge for this term to be relative to, this type of distance is vague. Claim 14 is also rejected for the scope of the phrase "along substantially the entire length" is not understood by the examiner. This phrase has ^{no}~~not~~ support in the specification or the drawings, thus, it can not be understood by the examiner.

The following is a quotation of the appropriate paragraphs of 35 U.S.C. § 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless --
(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

Claims 9,11,12 and 14 are rejected under 35 U.S.C. § 102(E) as being anticipated by Bays et al.

The discussion of Bays et al. in relation to claims 9,11 and 12 can be found in the first office action.

In relation to claim 14, the projections are closely spaced to one another for closely spaced is a relative term. Also, Bays et al discloses that their projections are along substantially the entire length of the shaft for Bays et al teach that the projections are over more than two-thirds of the shaft.

Art Unit: 3301

The following is a quotation of 35 U.S.C. § 103 which forms the basis for all obviousness rejections set forth in this Office action:

A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Subject matter developed by another person, which qualifies as prior art only under subsection (f) or (g) of section 102 of this title, shall not preclude patentability under this section where the subject matter and the claimed invention were, at the time the invention was made, owned by the same person or subject to an obligation of assignment to the same person.

Claim 15 is rejected under 35 U.S.C. § 103 as being unpatentable over Bays et al. Bays et al teach that the projections may number more than three. They teach that the projections may be as few as one and more than three. (column 4, lines 62-66) Therefore, the modification to make the rivet with five projections would have been an obvious choice of design in view of the teachings of Bays et al.

Claims 9,11,12,14 and 15 rejected under 35 U.S.C. § 103 as being unpatentable over Bays et al. in view of Chisholm et al.

The substance of this rejection can be found in the first office action, paper #3.

In response to applicant's arguments, the examiner submits that both the rejections under §102 and §103 are proper.

Art Unit: 3301

Applicant's remarks in relation to the §102 rejection assert that the limitations of the claims are not disclosed in the prior art. The first of these assertions is that the material is not flexible. However, the examine submits that the material is only semi-rigid, thus, the material has a degree of flexibility. Therefore, the material is flexible. Also, applicant is to note that Bays et al disclose using the same material as applicant recites in the specification. Bays et al disclose that Polyglycolide can be used as a material based upon the desired absorption rate for the material. (column 5, lines 44-47)

In relation to the amendment of claim 9, on lines 10 and 11, which recite that the projections are larger than the dimension of the rivets head, and applicant's argument that the first projection is larger than the remaining projections, the examiner submits that Bays et al discloses that the projection at the head is the smallest of the projections. The examiner submits that the projections "[widen] in diameter in a direction from distal end 12 toward proximal end 11". (column 4, lines 32-35) The driving tip as recited in claim 11 is clearly shown in Figure 1 of Bays et al. In response to applicant's arguments that the force and motion required to insert the rivet of Bays et al is greater than that needed to apply applicant's rivet is beyond the scope of applicant's claims.

Art Unit: 3301

In response to applicant's remarks which relate to the combination of Bays et al and Chisholm et al., the examiner submits that Chisholm et al. is analogous prior art. These references are ^{analogous} ~~analogies~~ for they are both rivets which are used for fastening. Chisholm et al. teach that their rivet will not be as easily removed from a bore as that of the prior art. Thus, they teach that their rivet will better maintain its position in a hole. Therefore, Chisholm et al teach an advantage to their rivet and one of ordinary skill wishing to better secure the rivet of Bays et al would have looked to the rivet and teachings of Chisholm et al. Therefore, the examiner submits that the modification of Bays et al in view of Chisholm et al is both obvious and proper.

Applicant's amendment necessitated the new grounds of rejection. Accordingly, **THIS ACTION IS MADE FINAL**. See M.P.E.P. § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 C.F.R. § 1.136(a).

A SHORTENED STATUTORY PERIOD FOR RESPONSE TO THIS FINAL ACTION IS SET TO EXPIRE THREE MONTHS FROM THE DATE OF THIS ACTION. IN THE EVENT A FIRST RESPONSE IS FILED WITHIN TWO MONTHS OF THE MAILING DATE OF THIS FINAL ACTION AND THE ADVISORY ACTION IS NOT MAILED UNTIL AFTER THE END OF THE THREE-MONTH SHORTENED STATUTORY PERIOD, THEN THE SHORTENED STATUTORY PERIOD WILL EXPIRE ON THE DATE THE ADVISORY ACTION IS MAILED, AND ANY EXTENSION FEE PURSUANT TO 37 C.F.R. § 1.136(a) WILL BE CALCULATED FROM THE MAILING DATE OF THE ADVISORY ACTION. IN NO EVENT WILL THE STATUTORY PERIOD FOR RESPONSE EXPIRE LATER THAN SIX MONTHS FROM THE DATE OF THIS FINAL ACTION.

Serial Number: 07/965,069


-6-

Art Unit: 3301

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Brian E. Hanlon whose telephone number is (703) 308-2678.

beh
October 5, 1993


ROBERT A. HAFER
S.P.E.
ART UNIT 331